FACT SHEET

Proposed NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Products Plants and Their Associated Facilities in Texas (TXG110000)

SUMMARY: EPA Region 6 is proposing to issue a general NPDES permit authorizing discharges of facility waste water and contact storm water from ready-mixed concrete plants, concrete products plants and their associated facilities in Texas. This permit covers facilities having Standard Industrial Classification (SIC) Codes 3273 (manufacture of ready-mixed concrete), 3272 (manufacture of concrete products, except block and brick) and 3271 (manufacture of concrete block and brick).

As proposed, the permit has the following requirements: Daily Maximum limits of 15 mg/l Oil and Grease and 65 mg/l Total Suspended Solids, and a pH limit of 6.0 to 9.0 Standard Units. There is also a requirement of no acute toxicity as determined by requiring greater than 50 % survival in 100 % effluent using a 24 hour acute test. In addition, the permit has limits on arsenic, barium, cadmium, chromium, copper, lead, manganese, mercury, nickel, selenium, silver and zinc as contained in Texas Natural Resource Conservation Commission Regulations for Hazardous Metals (30 TAC 319, Subchapter B), as well as requirements for no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil. There is also the requirement to develop and implement a pollution prevention plan for the storm water discharges authorized by this permit.

ADDRESSES: Comments on this proposed permit should be sent to the Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. For further information, contact Ms. Wilma Turner, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7516. The proposed general permit and this Fact Sheet can be found on the Internet at http://www.epa.gov/earth1r6/6wq/6wq.htm.

Supplementary information in this Fact Sheet is organized as follows:

VIII. Summary of Permit Requirements
IX. Other Legal Requirements

I. Legal Basis

Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314 and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

Two types of technology-based effluent limitations must be included in the permit proposed here. With regard to conventional pollutants, i.e., pH, BOD, oil and grease, TSS and fecal coliform, CWA section 301 (b)(1)(E) requires effluent limitations based on "best conventional pollution control technology" (BCT). With regard to nonconventional and toxic pollutants, CWA section 301(b)(2)(A), (C), and (D) require effluent limitations based on "best available pollution control technology economically achievable" (BAT), a standard which generally represents the best performing existing technology in an industrial category or subcategory. BAT and BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology (BPT), a standard applicable to similar discharges prior to March 31, 1989 under CWA 301(b)(1)(A).

Frequently, EPA adopts nationally applicable guidelines identifying the BPT, BCT, and BAT standards to which specific industrial categories and subcategories are subject. Until such guidelines are published, however, CWA section 402(a)(1) requires that EPA determine appropriate BCT and BAT effluent limitations in its NPDES permitting actions on the basis of its best professional judgment.

The Agency may issue "general permits" applicable to a class of similar dischargers within a discreet geographical area. See NRDC v. Costle, 568 F.2d 1369 (D.C. Cir. 1977) and 40 CFR 122.28. Issuance of such permits is not controlled by the procedural rules EPA uses for individual permits, but is instead subject to section 4 of the Administrative Procedure Act (APA), 5 U.S.C.

553, as supplemented by EPA regulations; e.g., 40 CFR 124.58. EPA must, however, comply with the substantive requirements of the CWA without regard to whether it is issuing an individual or general NPDES permit.

II. Regulatory Background

National guidelines establishing BCT, and BAT standards have not been promulgated for discharges from ready-mixed concrete plants or concrete products plants. The BCT and BAT requirements for these discharges have, therefore, been established using best professional judgement, as required by CWA section 402(a)(1).

III. Permit Coverage

This permit authorizes discharges of facility waste water and contact storm water from ready-mixed concrete plants, concrete products plants and their associated facilities to Waters of the United States in Texas. This permit does not authorize the discharge of domestic sewage.

Ready-mixed concrete plants are facilities, including temporary concrete batch plants, primarily engaged in mixing and delivering ready-mixed concrete as classified by SIC code 3273.

Concrete products plants are facilities primarily engaged in manufacturing concrete products as classified by SIC code 3272, and facilities primarily engaged in manufacturing concrete building blocks and bricks from a combination of cement and aggregate as classified by SIC code 3271.

Associated facilities are facilities associated with ready-mixed concrete plants or concrete products plants where maintenance and washing of ready-mixed vehicles (both interior and exterior) or equipment occurs.

Contact storm water means storm water which comes in contact with any raw material, product, by-product, co-product, intermediate or waste material.

Domestic sewage means waterborne human or animal waste and waste from domestic activities, such as washing, bathing and food preparation.

Facility waste water means any waste water which is generated at ready-mixed concrete plants, concrete products plants or associated facilities, but not including domestic sewage.

A. Notice of Intent (NOI) To Be Covered

Dischargers desiring coverage under this general NPDES permit must submit a Notice of Intent (NOI) which shall include the legal name and address of the operator, the location of the discharge (including the street address, if applicable, and the county of the facility for which the notification is submitted), the name of the receiving water, and a description of the facility(s) (ready-mixed concrete and/or concrete products plant and associated facilities). This NOI must be submitted within 30 days of the effective date of this permit for existing discharges and, for new discharges, at least 30 days before beginning the discharge.

B. Individual Permits

The Regional Administrator may consider the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(3). These criteria include:

1. the discharge(s) is a significant contributor of pollution,
2. the discharger is not in compliance with the terms and conditions of the general permit,
3. a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source,
4. effluent limitation guidelines are subsequently promulgated for the point sources covered by the general permit,
5. a Water Quality Management Plan containing requirements applicable to such point sources is approved, or
6. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

IV. Best Conventional Pollutant Control Technology (BCT) and Best Available Technology Economically Achievable (BAT)

The limitations and conditions of this permit have been designed to comply with the technology-based standards of the Clean Water Act (BCT/BAT). The parameters selected to limit as BCT/BAT, and which are the primary pollutants of concern for these facilities, are pH, TSS and oil and grease. The limits selected are pH of 6.0 to 9.0, TSS of 65 mg/l daily maximum and oil and grease of 15 mg/l daily maximum. These limits are economically achievable and involve no additional cost for compliance since these limits must

be currently met in order to comply with the TNRCC General Rule for discharges from ready-mixed concrete plants, concrete products plants, and associated facilities, 30 TAC 321, Subchapter J.

In addition, the requirement to develop and implement a pollution prevention plan for the storm water discharges covered by this permit constitute BCT/BAT. The requirements of this plan are stated in Section VIII of this Fact Sheet. This requirement should involve no additional cost for compliance since it is required by the NPDES Storm Water Multi-Sector General Permit for storm water discharges associated with ready-mixed concrete and concrete products plants.

V. Water Quality Requirements

EPA is required under 40 CFR 122.44(d) to include any requirements necessary to achieve State water quality standards as established under section 303 of the Clean Water Act. For the discharges authorized by this permit, there is one requirement in addition to the BCT/BAT requirements, discussed above, and the "Other State Requirements", discussed below, necessary to achieve compliance with Texas Water Standards (31 TAC 307.2 - 307.10). That requirement is contained in 31 TAC 307.6(e)(2)(B) and specifies no acute toxicity as determined by requiring greater than 50 % survival in 100% effluent using a 24 hour acute test. This no acute toxicity requirement is also contained in the TNRCC Rule 30 TAC 321, Subchapter J. The combination of the BCT/BAT technology requirements and the other State requirements (see below), plus the toxicity requirements, will assure that State water quality standards, both for aquatic life protection and human health protection, will be met.

VI. Other State Requirements

EPA is required under 40 CFR 122.44(d) to include any more stringent limits established under State law or regulations in accordance with section 301(b)(1)(C) of the Clean Water Act. The following additional limits are added to the permit in accordance with 301(b)(1)(C). Limits on arsenic, barium, cadmium, chromium, copper, lead, manganese, mercury, nickel, selenium, silver and zinc are established as required by the Texas Natural Resource Conservation Commission Regulations for Hazardous Metals (30 TAC 319, Subchapter B).

VII. Monitoring

40 CFR 122.44(i) requires monitoring for each pollutant limited

in a permit to assure compliance with the permit limits. The frequency of this monitoring shall be established on a case by case basis, but shall in no case be less than once per year. The monitoring frequency in this permit for Oil and Grease, Total Suspended solids and pH is established as once per month using grab samples. The discharge flow rate must be estimated once per month. These requirements are the same as those in the TNRCC Rule 30 TAC 321.155 for these same types of discharges. The monitoring frequency for the metals is established at once per year, the minimum allowed by 40 CFR 122.44(I), using grab samples. The monitoring frequency for the no acute toxicity requirements is established at once per 6 months. This is the frequency established by the NPDES Storm Water Multi-Sector General Permit for the no acute toxicity requirement for storm water discharges associated with ready-mixed concrete and concrete products plants in Texas.

VIII. Summary of Permit Requirements

	Daily Max Limit
Oil and Grease	15 mg/l
Total Suspended Solids	65 mg/l

	Monthly Average	Daily Max	Single Grab
Arsenic	.1 mg/l	.2 mg/l	.3 mg/l
Barium	1.0 mg/l	2.0 mg/l	4.0 mg/l
Cadmium (Inland Waters)	.05 mg/l	.1 mg/l	.2 mg/l
Cadmium (Tidal Waters)	.1 mg/l	.2 mg/l	.3 mg/l
Chromium	.5 mg/l	1.0 mg/l	5.0 mg/l
Copper	.5 mg/l	1.0 mg/l	2.0 mg/l
Lead	.5 mg/l	1.0 mg/l	1.5 mg/l
Manganese	1.0 mg/l	2.0 mg/l	3.0 mg/l
Mercury	.005 mg/l	.005 mg/l	.01 mg/l
Nickel	1.0 mg/l	2.0 mg/l	3.0 mg/l
Selenium (Inland Waters)	.05 mg/l	.1 mg/l	.2 mg/l
Selenium (Tidal Waters)	.1 mg/l	.2 mg/l	.3 mg/l
Silver	.05 mg/l	.1 mg/l	.2 mg/l
Zinc	1.0 mg/l	2.0 mg/l	6.0 mg/l

pH 6.0 - 9.0 Std. Units

There shall be no acute toxicity as determined by requiring greater than 50 % survival in 100 % effluent using a 24 hour acute test.

Pollution Prevention Plan

A Pollution Prevention Plan shall be prepared and implemented for

each facility covered by this permit. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of contact storm water discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in contact storm water discharges at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan as a condition of this permit. The plan shall be signed in accordance with Part II of the permit (Signatory Requirements) and be retained onsite at the facility that generates the storm water discharge in accordance with Part II (Retention of Records) of the permit.

The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit that are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 30 days of such notification, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified in the contents of the plan, or in otherwise achieving the general objectives of controlling pollutants in the contact storm water discharges.

The plan shall include, at a minimum, the following items:

1. Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility’s storm water pollution prevention plan.

2. Description of Potential Pollutant Sources. Each plan shall

provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants to storm water discharges or that may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials that may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part c (Spills and Leaks), below, have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas. Facilities shall also identify, on the site map, the location of any: bag house or other dust control device; recycle/sedimentation pond, clarifier or other device used for the treatment of process wastewater and the areas that drain to the treatment device. The map must indicate the outfall locations and the types of discharges contained in the drainage areas of the outfalls.

(ii) For each area of the facility that generates contact storm water discharges with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants that are likely to be present in the storm water discharges. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Inventory of Exposed Materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit and the present; method and location of onsite storage or

disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and Leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling Data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk Identification and Summary of Potential Pollutant Sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations, outdoor storage activities, outdoor manufacturing or processing activities, significant dust or particulate generating processes, and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and, for each potential source, any pollutant or pollutant parameter (for example, Total Suspended Solids (TSS), etc.) of concern shall be identified.

3. Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good Housekeeping. Good housekeeping requires the maintenance of areas that may contribute pollutants to storm water discharges in a clean, orderly manner.

(I) Facilities shall prevent or minimize the discharge of spilled cement, aggregate (including sand or gravel), settled dust or other significant materials in storm water from paved portions of

the site that are exposed to storm water. Measures used to minimize the presence of these materials may include regular sweeping, or other equivalent measures. The plan shall indicate the frequency of sweeping or other measures. The frequency shall be determined based upon consideration of the amount of industrial activity occurring in the area and frequency of precipitation, but shall not be less than once per week when cement or aggregate is being handled or otherwise processed in the area.

(ii) Facilities shall prevent the exposure of fine granular solids such as cement to storm water. Where practicable, these materials shall be stored in enclosed silos, hoppers or buildings, in covered areas, or under covering.

b. Preventive Maintenance. A preventive maintenance program shall involve routine inspection and maintenance of storm water management devices (for example, cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill Prevention and Response Procedures. Areas where potential spills that can contribute pollutants to storm water discharges can occur, and their accompanying drainage points, shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility specified in the plan. The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of once per month while the facility is in operation. The inspection shall take place while the facility is in operation and shall at a minimum include all of the following areas that are exposed to storm water at the site: material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, truck wash down and equipment cleaning areas. Tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. Employee Training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping, truck wash out procedures, equipment wash down procedures and material management practices. The pollution prevention plan shall identify periodic dates for such training.

f. Record Keeping and Internal Reporting Procedures. A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. Sediment and Erosion Control. The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

h. Management of Runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those that control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges (see Item 2 of this section - Description of Potential Pollutant Sources) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices or other equivalent measures.

4. Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to contact storm water discharges, including but not limited to: material handling areas, above ground storage tanks, hoppers or silos, dust collection/ containment systems, truck wash down and equipment. Cleaning areas shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures, such as recycle ponds, identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the evaluation, the description of potential pollutant sources identified in the plan in accordance with Item 2 of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with Item 3 of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such evaluation and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the evaluation.

c. A report summarizing the scope of the evaluation, personnel making the evaluation, the date(s) of the evaluation, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Item 4.b, above, shall be made and retained as part of the storm water pollution prevention plan for at least 3 years after the date of the evaluation. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with signatory requirements of the permit.

d. Where compliance evaluation schedules overlap with inspections required under Item 3.d, above, the compliance evaluation may be conducted in place of one such inspection.

IX. Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Clean Water Act, EPA may not issue

an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The proposed permit contains limitations intended to ensure compliance with state water quality standards and has been determined by EPA Region 6 to be consistent with the applicable state's water quality standards and the corresponding implementation plans. The Region has solicited certification from the Texas Natural Resources Conservation Commission.

B. Endangered Species Act

As stated previously in this Fact Sheet, the proposed limits are sufficiently stringent to assure state water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permits is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA is seeking written concurrence from the United States Fish and Wildlife Service on this determination.

C. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

D. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12866.

E. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., in submission made for the NPDES permit program and assigned OMB control numbers 2040-0086 (NPDES permit application) and 2040-0004 (discharge monitoring reports).

F. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 USC 601 et seq, requires that EPA prepare a regulatory flexibility analysis for regulations

that have a significant impact on a substantial number of small entities. As discussed previously in this Fact Sheet, compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by these permits. EPA Region 6 therefore concludes that the permits proposed today will not have a significant impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), P.L. 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall . . . assess the effects of Federal regulatory actions . . . (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law. . ."

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act (CWA). While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA thinks it is unlikely that this proposed permit issuance would contain a Federal requirement that might result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The Agency also believes that the proposed permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency

establishes an alternative definition. The proposed permit issuance also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.